

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT I. HANFLING,
Chapter 7 Trustee of the Bankruptcy
Estates of ATG, Inc. and ATG
Catalytics, LLC,

Plaintiff,

v.

EPSTEIN BECKER & GREEN, P.C.,

Defendant.

Civil Action No. 05-10077-RGS

MOTION OF DEFENDANT EPSTEIN BECKER & GREEN, P.C. FOR COSTS

Pursuant to 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)(1), defendant Epstein Becker & Green, P.C. ("EBG"), as the prevailing party on the claims asserted by plaintiff Robert I. Hanfling, Chapter 7 Trustee of the Bankruptcy Estates of ATG, Inc. and ATG Catalytics, LLC (the "Trustee"), moves this Court to order the Trustee to pay EBG's costs in connection with this action, as follows:

(1) fees of the court reporter for stenographic transcripts necessarily obtained for use in the case and

(2) witness fees.

As grounds for this motion, and as further detailed in the accompanying Affidavit of Paula M. Bagger in Support of Motion of Defendant Epstein Becker & Green, P.C. for Costs, EBG states as follows:

1. Section 1920 of Title 28 of the United States Code provides that a prevailing party shall recover certain statutory costs. In this case, these include a \$20.00 docket fee on a final hearing in a civil case and \$2.50 for each deposition admitted into evidence. Eight depositions were admitted into evidence in this matter and, therefore, statutory costs total \$40.00 in this case.

2. In addition, pursuant to 28 U.S.C. § 1920, the Court may in its discretion award as costs (1) “[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case,” (2) “[f]ees of the clerk,” and (3) “[f]ees and disbursements for . . . witnesses.”

3. In this case, EBG incurred a total of \$2,576.80 in stenographic costs in connection with depositions submitted in evidence on EBG’s motion for summary judgment, as follows:

\$1,016.40 Deposition of Carole Schwartz Rendon

\$309.00 Deposition of Alan Braunstein

\$192.40 Deposition of Michael Tuteur

\$136.05 Deposition of Jarvis Kellogg

\$132.50 Deposition of Christopher Nagel

\$258.60 Deposition of Eugene Berman

\$308.85 Deposition of Ethan Jacks

\$223.00 Deposition of Kenneth Weckstein¹

4. In addition, EBG paid a filing fee of \$150.00 to the United States District Court for the Northern District of California for its motion to withdraw the reference and incurred a process server’s charge of \$37.00 and witness fee of \$42.00 in connection with Mr. Braunstein’s deposition.

¹ EBG is not seeking reimbursement for a stenographic record of the Robert I. Hanfling deposition, which was not introduced into evidence on summary judgment.

5. It was reasonably necessary for EBG to notice and take the depositions of Alan Braunstein and Carole Schwartz Rendon and to question actively at the following depositions, noticed by the Trustee: Kenneth Weckstein, Ethan Jacks, Eugene Berman, Christopher Nagel, Jarvis Kellogg, and Michael Tuteur. The case was an action alleging legal malpractice. Ms. Rendon and Messrs. Weckstein, Kellogg, and Tuteur are former or current EBG attorneys whose work was called into question. Messrs. Jacks and German were in-house counsel for Molten Metal Technology, Inc. ("MMT"), a company that the Trustee alleges EBG represented, and Dr. Nagel was represented by EBG when an MMT employee. Mr. Braunstein was counsel to MMT's Chapter 11 Trustee and his deposition became necessary when EBG learned, early in discovery, that the Trustee had relied upon information learned from Mr. Braunstein in formulating his original Complaint against EBG.

6. This motion for costs is supported by the Affidavit of Paula M. Bagger, filed herewith as required by 28 U.S.C. § 1924.

WHEREFORE, EBG seeks an award of costs, pursuant to 28 U.S.C. §§ 1920 and 1923, in a total amount of \$2,865.80.

Respectfully submitted,

EPSTEIN BECKER & GREEN, P.C.

By its attorneys,

_____/s/ Paula M. Bagger_____
Marjorie Sommer Cooke (BBO # 097800)
Paula M. Bagger (BBO # 547703)
COOKE, CLANCY & GRUENTHAL, LLP
150 Federal Street
Boston, MA 02110
(617) 428-6800

Dated: February 1, 2007

CERTIFICATE OF SERVICE

I, Paula M. Bagger, hereby certify that I have this 1st day of February, 2007 served a true copy of this pleading upon counsel for the plaintiff by this Court's CM/ECF filing system.

_____/s/ Paula M. Bagger_____
Paula M. Bagger